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EXAMINER

ELLIS, SUEZU Y

ART UNIT

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1615

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/525,637	Applicant(s) LEBOK ET AL.	
	Examiner Suezu Ellis	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 36-76 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36-38, 51-53 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Koulbanis et al. (US 4,437,895).

With respect to claim 36, 37 and 51, Koulbanis et al. discloses a lipid-bearing preparation for cosmetic uses, comprising an oil and a solid phase (fillers), wherein the oil phase consists of a mixture of vegetable-base raw materials, wherein the vegetable-base raw materials are selected from the group consisting of vegetable oils, hydrogenated vegetable oils, vegetable waxes, and mixtures thereof (col. 3, lines 33-37, 46-50; claim 6),

With respect to claim 38, Koulbanis et al. discloses the vegetable oil is a mixture of jojoba oil and mango oil.

With respect to claims 52 and 53, Koulbanis et al. discloses the fillers/inorganic pigments are kaolin or titanium oxide.

With respect to claim 63, Koulbanis et al. discloses the lipid-bearing preparation is provided as a make up or as a sun protection agent (col. 3, lines 5-15, 20-25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41, 42, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koulbanis et al. in view of Johnson ("What's that stuff? Lipstick" article).

With respect to claims 41, 42, 44 and 45, Koulbanis et al. addresses all the limitations of claim 36, and further discloses the content of the vegetable oils/waxes is in the range of 5-95% with respect to the total weight of the preparation (col. 1, lines 47-53; col. 2, lines 54-60). While it is possible for the ranges of the vegetable wax to be in the range as claimed, Koulbanis et al. fails to expressly disclose an example demonstrating the percentage being in the claimed range. Johnson discloses the waxes are related to the shape and ease of application of lipsticks (pg. 2, paragraph starting with "Lipsticks contains a variety of..."). It would have been obvious to one of

Art Unit: 1615

ordinary skill in the art to modify the amount of vegetable wax in order to obtain the best/desired results (e.g. shape of lipstick, ease of application). Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koulbanis et al. in view of Bonda et al. (US 6,355,261).

With respect to claims 64-66, Koulbanis et al. addresses all the limitations of claims 36, and further discloses the inclusion of a preservative or perfume (col. 3, lines 26-28). However, Koulbanis et al. fails to expressly disclose the amount of preserving agent and the type of preserving agent used. It is well known in the art to use rosemary extract as a preserving agent, and the preserving agent being about 0.5% by weight with respect to the total weight of the preparation, as taught by Bonda et al. (Classic Lipstick table in col. 11; col. 12, lines 3-4). It would have been an obvious design choice to one having ordinary skill in the art to modify the preserving agent to be rosemary extract, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It also would have been obvious to one of ordinary skill in the art to modify the amount of preserving agent in order to safely and effectively prevent the growth of microorganisms. Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering

Art Unit: 1615

the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koulbanis et al. in view of Bonda et al. and further in view of Purohit et al. (US 4,966,754).

With respect to claim 67, the modified Koulbanis et al. addresses all the limitations of claims 36, 64 and 65, and further discloses using natural perfumes (essential oils) as preserving agents (col. 7, lines 37-39). The modified Koulbanis fails to expressly disclose the preserving agent selected from the group consisting of geraniol, linalool, neroli, vanillin, eugenol, methyleugenol, palmarosa oil and mixtures thereof. Purohit et al. discloses using natural perfumes (essential oils) as preserving agents in cosmetic compositions (col. 1, lines 6-10). Purohit et al. also discloses the essential oils are selected from the group consisting of linalool, geraniol, neroli, eugenol and palmarosa oil (table in col. 2 – col. 3), and provides in Blend X (col. 3) a blend of oils used comprising linalool, geraniol and neroli. It would have been obvious to one of ordinary skill in the art to include natural perfumes disclosed in Purohit et al. as preserving agents in order to provide safe, mild and effective preservatives (col. 1, lines 37-40, 62-65). Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable Koulbanis et al. in view of Cargo Cosmetics ("Behind the Brand" article on www.cargocosmetics.com).

With respect to claims 71 and 72, Koulbanis et al. address all the limitations of claim 36, and further discloses various forms the cosmetic can be, including a product can be for coloring lips and/or for preventing cracking of the lips (col. 3, lines 11-14). However, Koulbanis et al. fails to expressly disclose the preparation being introduced into a tube or pot. However, it is well known in the art that lip balms and lip glosses (products for coloring lips and/or for preventing cracking) are packaged in (introduced into) tubes or pots, such as tin pots (functionally equivalent to metal bowl), as demonstrated by Cargo Cosmetics. It would have been obvious design choice to one of ordinary skill in the art to modify the container that the preparation is introduced into in order to package the lip polish in packaging attractive to consumers.

Claims 36-44, 47, 51, 53, 55, 63 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calello et al. (US 6,086,859) in view of Koulbanis et al.

With respect to claims 36, 37, 51 and 63, Calello et al. discloses a lipid-bearing preparation for cosmetic uses (lipstick) (col. 1, lines 62-65), comprising an oil phase, and a solid phase (pigment) (col. 2, lines 45-58), wherein the oil phase can have a mixture of vegetable-base raw materials, wherein the vegetable-base raw materials are selected from the group consisting of vegetable oils, hydrogenated vegetable oils, vegetable waxes, and mixtures thereof (col. 3, lines 50-51, col. 4, lines 66-67). While

Art Unit: 1615

Calello et al. discloses the oil phase can also incorporate oils/waxes from animals, it would have been obvious to one of ordinary skill in the art to omit those types (non-vegetable-base) of raw materials, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same function as before involves only routine skill in the art. *Ex parte Wu*, 10 USPQ 2031. Further, one would have been motivated to omit the non-vegetable-base raw materials in order to provide an oxidation stable mixture, as taught by Koulbanis et al.

With respect to claim 38, 39 and 47, the modified Calello et al. discloses the mixture of oils includes hydrogenated jojoba oil and meadowfoam seed oil (col. 4, lines 20, 38-40; col. 4, line 66 - col. 5, line 12).

With respect to claim 40, the modified Calello et al. discloses the wax can be candelilla or carnauba (col. 4, lines 66-67).

With respect to claims 41 and 44, the modified Calello et al. discloses the content of vegetable waxes (hydrogenated jojoba oil) is in a range of 5-85% (col. 4, lines 60 - col. 5, line 1). While it is possible for the ranges of the vegetable wax to be in the range as claimed, Calello et al. fails to expressly disclose an example demonstrating the percentage being in the claimed range. Nevertheless, it would have been obvious to one of ordinary skill in the art to modify the amount of vegetable oils through routine or manipulative experimentation in order to obtain the best possible results. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 42 and 43, the modified Calello et al. discloses the content of vegetable waxes (hydrogenated jojoba oil) is in a range of 10-30% (col. 4, line 60 - col. 5, line 1)

With respect to claims 53 and 55, the modified Calello et al. discloses the pigment comprising of organic and inorganic pigments (chromium hydroxide) (col. 2, lines 13-14, 20-22), where the pigment is 1-25% by weight with respect to the total weight of the preparation (col. 2, lines 10-14).

With respect to claim 76, the modified Calello et al. discloses a storage stable cosmetic mass (col. 1, lines 62-65), comprising meadowfoam seed oil and hydrogenated jojoba oil (col. 2, lines 45-58; col. 4, lines 20, 38-40; col. 4, line 66 - col. 5, line 12).

Claims 45, 46, 48-50, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calello et al. in view of Koulbanis et al. and further in view of Johnson.

With respect to claim 45 and 46, the modified Calello et al. addresses all the limitations of claims 36 and 37, and further discloses the content of vegetable waxes (hydrogenated jojoba oil) is in a range of 10-30% (col. 4, lines 60 - col. 5, line 1). While it is possible for the ranges of the vegetable wax to be in the range as claimed, the modified Calello et al. fails to expressly disclose an example demonstrating the percentage being in the claimed range. Johnson discloses the waxes are related to the shape and ease of application of lipsticks (pg. 2, paragraph starting with "Lipsticks

Art Unit: 1615

contains a variety of..."). It would have been obvious to one of ordinary skill in the art to modify the amount of vegetable wax in order to obtain the best/desired results (e.g. shape of lipstick, ease of application). Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 48-50, the modified Calello et al. addresses all the limitations of claims 36 and 47, and further discloses the hydrogenated jojoba oil is in a range of 3-40% by weight, and more preferably 10-30% by weight, and the meadowfoam seed oil is in a range of 5-85% by weight, and more preferably 20-75% by weight (col. 3, lines 23-28; col. 4, lines 60-63). While it is possible for the ranges of the vegetable-base raw materials to be in the ranges as claimed, the modified Calello et al. fails to expressly disclose an example demonstrating the percentages being in the claimed ranges. Johnson discloses that the oils and waxes are related to the ease of application, shine and shape of lipsticks (pg. 2, paragraph starting with "Lipstick contains a variety of..."). It would have been obvious to one of ordinary skill in the art to modify the amount of vegetable-base raw materials in order to obtain the best/desired results (e.g. shape of lipstick, ease of application, shine, etc.). Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 54, the modified Calello et al. addresses all the limitations of claims 36 and 51, and further discloses the use of organic pigments which are lakes

Art Unit: 1615

of insoluble metallic salts of certified color additives (col. 2, lines 10-22). However, modified Calello et al. fails to expressly disclose the lakes are of organic coloring agents with aluminum, barium, calcium, strontium, or zirconium. Johnson teaches that calcium lake is a common dye in lipsticks (pg. 2, paragraph starting with "Lipstick gets its color from..."). It would have been obvious to one having ordinary skill in the art to modify the type of pigment used, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claims 56 and 57, the modified Calello et al. addresses all the limitations of claims 36 and 51, and further discloses the amount of organic and inorganic pigments are in a range of between 1-25% by weight with respect to the total weight of the preparation (col. 2, lines 10-14). While it is possible for the range of the pigments to be in the range as claimed, the modified Calello et al. fails to expressly disclose an example demonstrating the percentages being in the claimed ranges. Johnson discloses the amount of pigment is related to the shade of color of lipsticks (pg. 2, paragraph starting with "Lipsticks gets its color from..."; pg. 3, paragraph starting with "Matte lipsticks..."). It would have been obvious to one of ordinary skill in the art to modify the amount of pigment in order to obtain the best/desired color intensity. Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Art Unit: 1615

Claims 36-40, 51-53, 55, 59, 60 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchi-Lemann et al. (US 6,004,567) in view of Koulbanis et al.

With respect to claims 36, 37 and 63, Marchi-Lemann et al. discloses a lipid-bearing preparation for cosmetic uses (col. 6, lines 11-15), comprising an oil phase (oils and/or waxes) and a solid phase (nanopigment particles, fillers), wherein the oil phase can be a mixture of vegetable-base raw materials, selected from vegetable oils, hydrogenated vegetable oils, vegetable waxes and mixtures thereof (col. 2, lines 6-9; col. 3, lines 39-41; col. 4, lines 49-50, 60-62). While Marchi-Lemann et al. discloses the oil phase can also incorporate oils/waxes from animals, it would have been obvious to one of ordinary skill in the art to omit those types (non-vegetable-base) of raw materials, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same function as before involves only routine skill in the art. *Ex parte Wu*, 10 USPQ 2031. Further, one would have been motivated to omit the non-vegetable-base raw materials in order to provide an oxidation stable mixture, as taught by Koulbanis et al.

With respect to claims 38 and 40, the modified Marchi-Lemann et al. discloses the vegetable-base raw materials are selected from the group consisting of jojoba oil and the vegetable waxes are selected from the group consisting of carnauba wax and candelilla wax (col. 3, lines 48-49, 65-66).

Art Unit: 1615

With respect to claim 39, the modified Marchi-Lemann et al. discloses the hydrogenated vegetable oils are selected from the group consisting hydrogenated castor oil (col. 4, lines 60-62).

With respect to claims 51 and 52, the modified Marchi-Lemann et al. discloses the solid phase selected from the group consisting of fillers, wherein the filler is selected from the group consisting of talc or nylon powder (col. 3, lines 31-38).

With respect to claim 51 and 53, the modified Marchi-Lemann et al. discloses the solid phase selected from the group consisting of inorganic pigments, wherein the inorganic pigments are selected from the group consisting of titanium dioxide, zinc oxide or bismuth oxychloride (col. 3, lines 21-24).

With respect to claim 55, the modified Marchi-Lemann et al. discloses the amount of organic and inorganic pigments are in a range of between 1 and 50% by weight with respect to the total weight of the preparation (col. 2, line 6; col. 4, lines 30-34).

Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchi-Lemann et al. in view of Koulbanis et al. and further in view of Cohen et al. (US 5,560,917).

With respect to claim 58, the modified Marchi-Lemann et al. addresses all the limitations of claims 36, 51 and 55, and further discloses the pigments having particle sizes in the range of between 10-30 nm (col. 3, lines 8-13). While it is possible for the ranges of the vegetable wax to be in the range as claimed, the modified Marchi-Lemann

Art Unit: 1615

et al. fails to expressly disclose an example demonstrating the percentage being in the claimed range. Cohen et al. teaches it is well known in the art to utilize nanopigments with the size ranges of 12-20 nm (col. 4, lines 36-38). It would have been obvious to one of ordinary skill in the art to modify the size of the nanopigments in order to provide cosmetic compositions that have UV screening properties but are also transparent and free from whitening when applied to the skin (Marchi-Lemann - col. 1, lines 50-58). Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 59 and 60, the modified Marchi-Lemann et al. discloses using titanium oxide and/or zinc oxide as nanopigments as light protection agents (col. 3, lines 17-20). The modified Marchi-Lemann et al. further discloses the combination of nanopigments and fillers are in an amount between 2-30% by weight, and more preferably 5-15% by weight, with respect to the total weight of the preparation (col. 4, lines 30-34). Cohen et al. teaches it is well known in the art for cosmetic compositions to have about 6-10% by weight of nanopigments (col. 5, lines 4-12). It would have been obvious to one of ordinary skill in the art to modify the amount of nanopigments in the composition in order to provide effective UV screening protection. Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchi-Lemann et al. in view of Koulbanis et al. and further in view of Holderbaum et al. (US 6,007,828).

With respect to claims 61 and 62, the modified Marchi-Lemann et al. addresses all the limitations of claims 36, 51, 53 and 59, however fails to expressly disclose the nanopigments are used in combination with oil-soluble UV-A and UV-B light filter substances. Holderbaum et al. illustrates in Example 3, a formulation for sunblock comprising titanium dioxide, as well as 4-methylbenzylidene camphor and isoamyl p-methoxycinnamate (organic sunscreens). It would have been obvious to one of ordinary skill in the art to include 4-methylbenzylidene camphor and isoamyl p-methoxycinnamate with the titanium dioxide nanopigments of the modified Marchi-Lemann et al. in order to enhance the UV screening properties (providing both UV-A and UV-B protection).

Claims 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchi-Lemann et al. in view of Koulbanis et al. and further in view of Bonda et al. (US 6,355,261).

With respect to claims 64-66, the modified Marchi-Lemann et al. addresses all the limitations of claims 36, and further discloses the inclusion of a preservative (col. 5, line 18). However, the modified Marchi-Lemann fails to expressly disclose the amount of preserving agent and the type of preserving agent used. It is well known in the art to use rosemary extract as a preserving agent, and the preserving agent being about 0.5%

Art Unit: 1615

by weight with respect to the total weight of the preparation, as taught by Bonda et al. (Classic Lipstick table in col. 11; col. 12, lines 3-4). It would have been an obvious design choice to one having ordinary skill in the art to modify the preserving agent to be rosemary extract, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It also would have been obvious to one of ordinary skill in the art to modify the amount of preserving agent in order to safely and effectively prevent the growth of microorganisms. Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marchi-Lemann et al. in view of Koulbanis et al. and further Bonda et al. and further in view of Purohit et al. (US 4,966,754).

With respect to claim 67, the modified Marchi-Lemann et al. addresses all the limitations of claims 36, 64 and 65, and further discloses using natural perfumes (essential oils) as preserving agents (col. 7, lines 37-39). However, the modified Marchi-Lemann fails to expressly disclose the preserving agent selected from the group consisting of geraniol, linalool, neroli, vanillin, eugenol, methyleugenol, palmarosa oil and mixtures thereof. Purohit et al. discloses using natural perfumes (essential oils) as preserving agents in cosmetic compositions (col. 1, lines 6-10). Purohit et al. also

Art Unit: 1615

discloses the essential oils are selected from the group consisting of linalool, geraniol, neroli, eugenol and palmarosa oil (table in col. 2 – col. 3), and provides in Blend X (col. 3) a blend of oils used comprising linalool, geraniol and neroli. It would have been obvious to one of ordinary skill in the art to include natural perfumes disclosed in Purohit et al. as preserving agents in order to provide safe, mild and effective preservatives (col. 1, lines 37-40, 62-65). Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 68-70 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable Marchi-Lemann et al. in view of Koulbanis et al. and further in view of Lebok et al. (US 6,277,182).

With respect to claims 68-70 and 73-75, the modified Marchi-Lemann et al. address all the limitations of claim 36, and further discloses the cosmetic is in the form of an eyeliner (col. 6, line 14). The modified Marchi-Lemann et al. fails to expressly disclose the method of preparing the eyeliner. Lebok et al. discloses various methods of preparing an eyeliner pencil (col. 4, line 38). Lebok et al. discloses the preparation is in the form of a stick glued into sleeve banks (col. 6, lines 19-21). Lebok et al. also discloses the sleeve banks made of wood (col. 4, lines 33-34). Lebok et al. discloses the preparation is alternatively in the form of a cast into a sleeve bank (col. 4, lines 59-60) and further discloses the sleeve bank made of plastic (col. 4, lines 33-34). Lebok et al. discloses the preparation is in the form of a stick and is cast into a rotary spindle

Art Unit: 1615

mechanism (col. 4, lines 60-61). Lebok et al. also discloses a method of producing an eyeliner pencil comprising shaping the preparation by forming a lead by casting and the lead is further processed to form a pencil (col. 5, lines 1-10). Lebok et al. also discloses the method comprises casting the preparation into a rotary mechanism of a pencil to form a lead, or into wood, glued and further processed to form a lead pencil (col. 4, lines 60-65). It would have been obvious to one of ordinary skill in the art to utilize the method(s) of Lebok et al. in order to form the desired eyeliner pencil of Marchi-Lemann et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Han et al. (US 5,976,560) discloses petroleum jelly comprising vegetable oil and silica.

Koulbanis (US 4,324,802) discloses a cosmetic oil comprising a mixture of jojoba oil, turnsole oil and a non-saponifiable fraction.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone/Fax Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suezu Ellis whose telephone number is (571) 272-2868. The examiner can normally be reached on 8:30am-5pm (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharon Kennedy can be reached on (571) 272-4948. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

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